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ABSTRACT

This pamphlet explains Section 504 of the Rehabilitation Act of 1973, which outlaws disability discrimination in programs receiving federal funds and the extensive regulations stemming from Section 504. The rights and responsibilities of handicapped persons are related to the following issues: eligibility for coverage under the law; program accessibility; preschool, elementary, secondary, and adult education; postsecondary education; health, welfare, and social services; and employment practices. Procedures for filing a complaint of discrimination are included, along with a list of regional civil rights offices of the U.S. Department of Education's Office for Civil Rights. (JDD)

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Handicapped Persons' Rights Under Federal Law

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EC 202038

OFFICE FOR CIVIL RIGHTS

INFORMATION FOR THOSE WHO HAVE RIGHTS AND RESPONSIBILITIES UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973

INFORMATION FOR THOSE WHO HAVE RIGHTS AND RESPONSIBILITIES UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973

Handicapped Persons' Rights

Under Federal Law

January 1987

U.S. Department of Education
Office for Civil Rights
Washington, D.C. 20202

Preface

In enacting Section 504 of the Rehabilitation Act of 1973, Congress recognized that many handicapped persons have been victims of discrimination that has denied them an equal chance to lead full and productive lives. As a result of Section 504, handicapped persons now receive better and more integrated educational services which, in turn, enable them to fully develop their potential.

Eliminating discrimination against handicapped persons represents a major national commitment. The Office for Civil Rights recognizes that effective enforcement of Section 504 provides an important opportunity to bring millions of handicapped persons into the mainstream of American life.

Section 504 of the Rehabilitation Act of 1973

Handicapped Persons' Rights Under Federal Law

As part of the Rehabilitation Act of 1973 (Public Law 93-112), Congress enacted Section 504, the first Federal civil rights law protecting the rights of handicapped persons. Section 504 provides that "no otherwise qualified handicapped individual in the United States . . . shall, solely by reason of . . . handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

On May 4, 1977, the Department of Education's predecessor, the Department of Health, Education, and Welfare, issued the final regulation implementing Section 504. The regulation became effective June 3, 1977. On May 9, 1980, the Department of Education adopted the same regulation.

The regulation applies to all recipients of Federal financial assistance from the Department of Education. Recipients include state education agencies, elementary and secondary school systems, colleges and universities, libraries, vocational schools and state vocational rehabilitation agencies.

Section 504 covers only those handicapped persons who are otherwise qualified to participate in and benefit from the programs or activities receiving Federal financial assistance. This coverage extends to persons who are handicapped as well as persons who have a history of a handicapping condition and persons perceived by others to be handicapped. A handicapped person is anyone with a physical or mental impairment that substantially impairs or restricts one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The term physical or mental impairment includes, but is not limited to, speech, hearing, visual and orthopedic impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, diabetes, heart disease, mental retardation, emotional illness, and specific learning disabilities such as perceptual handicaps, brain injury, dyslexia, minimal brain dysfunction and developmental aphasia. In accordance with a formal opinion issued by the Attorney

General on April 12, 1977, alcoholism and drug addiction are also handicapping conditions.*

The regulation requires all recipients that employ fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of handicap in any action prohibited by the regulation. However, the procedures need not be established with respect to complaints from applicants for employment or applicants for admission to postsecondary educational institutions.

Program Accessibility

In accordance with the Section 504 regulation, no qualified handicapped person shall be denied the benefits of, be excluded from participation in, or be otherwise subjected to discrimination under any program or activity because a recipient's facilities are inaccessible or unusable. The Section 504 regulation requires all recipients of Federal financial assistance from the Department of Education to operate their federally assisted programs or activities so that when viewed in their entirety they are readily accessible to handicapped persons.

The regulation also requires that recipients adopt and implement procedures to ensure that interested persons, including persons with impaired vision and hearing, can obtain information as to the existence and location of federally assisted services, activities, and facilities that are accessible to and usable by handicapped persons.

The regulation contains two standards to be used in determining whether a recipient's programs and activities are accessible to handicapped persons. One standard deals with "existing" facilities; the other deals with "new" construction. The term "existing facility" means the facility was in existence or in the process of construction before June 3, 1977, the effective date of the regulation. The term "new construction" means groundbreaking took place on or after the effective date of the regulation.

The standard for a facility existing before June 3, 1977 requires that federally assisted programs or activities operated in that facility

*Although alcoholism and drug addiction are handicapping conditions, the 1978 amendments to the Rehabilitation Act of 1973 (Public Law 95-602) clarified the status of alcohol and drug abusers as they relate to employment by stating that the term handicapped ". . . does not include any individual who is an alcoholic or drug abuser and whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question, or whose employment by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others."

must, when viewed in their entirety, be readily accessible. This standard does not require that every facility or part be accessible, so long as the program as a whole is accessible.

Thus, recipients need not make structural changes to facilities which existed before June 3, 1977, where other alternative methods are effective in making programs and activities accessible, so long as priority consideration is given to offering the programs or activities in the most integrated setting appropriate.

One example of an alternative method in an educational institution would be the relocation of classes, activities or services to an accessible site. Facility alteration or new construction is required to achieve program accessibility only if sufficient relocation of classes, activities or services cannot be housed in an existing facility.

In meeting the objective of program accessibility, a recipient must take precautions not to isolate or concentrate handicapped persons in settings away from nonhandicapped participants, since the regulation prohibits unnecessary segregation of handicapped people. As an example, it would be a violation to make only one facility or part of a facility accessible if this resulted in segregating handicapped persons.

On the other hand, the regulation requires that all new construction begun after June 3, 1977, as well as alterations which could affect access to and use of existing facilities, must be designed and constructed so as to make facilities accessible and usable by handicapped persons. Design, construction, and alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" [ANSI A 117.1-1961 (R1971)]* would provide program accessibility, and constitute compliance with the requirement for new facilities and alterations. However, departure from the ANSI standards by use of other methods is permissible as long as equivalent access to a facility is provided.

Preschool, Elementary and Secondary, and Adult Education

The Section 504 regulation applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

*The ANSI standards were revised in 1980. However, the regulation requires compliance only with the 1971 ANSI standards, copies of which may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

For purposes of public educational services, a qualified handicapped person must be:

1. of an age during which nonhandicapped persons are provided such services,
2. of any age during which it is mandatory under state law to provide such services to handicapped persons, or
3. a person for whom a state is required to provide a free appropriate public education under the Education of the Handicapped Act.*

Each recipient that operates a federally assisted public elementary or secondary education program must provide a free and appropriate public education to each qualified person in its jurisdiction, regardless of the nature or severity of the person's handicap. Recipients that operate a public elementary or secondary education program must also annually attempt to identify and locate unserved handicapped children.

Provision of an appropriate education is the provision of regular or special education and related aids and services such that:

- Educational services are designed to meet handicapped children's individual educational needs as adequately as the needs of nonhandicapped persons are met.
- Each handicapped child is educated with nonhandicapped children, to the maximum extent appropriate to the needs of the handicapped child.
- Nondiscriminatory evaluation and placement procedures are established to guard against misclassification or misplacement of students, and a periodic reevaluation is conducted of students who have been provided special education and related services.
- Due process procedures are established so that parents and guardians can review evaluation and placement decisions made with respect to their children, and can participate and be represented by counsel in any subsequent impartial hearing.

Provision of a free public education requires recipients that operate a public elementary or secondary education program to provide services without cost to the handicapped person, or to his or her parents or guardians, except for those fees imposed on nonhandicap-

*The Education of the Handicapped Act provides for Federal financial assistance to states to ensure that each handicapped child receives a free appropriate public education. Copies of the regulation implementing the Education of the Handicapped Act may be obtained by writing to the Department of Education, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

ped persons, parents or guardians. It also means that, if a school district is unable to provide a handicapped child with an appropriate education and places or refers that child to a program it does not operate, the district is still responsible for the costs of the program, including tuition, room and board, transportation, and nonmedical care.

An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions, and may be accompanied by such related services as developmental, corrective, and other supportive services, including psychological counseling and medical diagnostic services.

Handicapped children must also be afforded an equal opportunity to participate in nonacademic and extracurricular services and activities such as counseling, physical education, recreational athletics, transportation, health services, recipient sponsored clubs, recipient employment and assistance in obtaining outside employment. These services must be provided by the recipient in such manner as is necessary to afford handicapped students an equal opportunity for participation.

Elementary and secondary school recipients operating preschool and adult education programs must take into account the needs of qualified handicapped persons in determining the aid, benefits, or services to be provided under these programs or activities.

Recipients that operate a federally assisted private elementary or secondary school education program must admit qualified handicapped persons who, with minor adjustments, can participate in the regular program. As an example, a private elementary or secondary school would not be permitted to exclude, on the basis of blindness, a blind applicant who is able to participate in the regular program with minor adjustments. On the other hand, a recipient operating a private elementary or secondary school education program is not required to provide an appropriate education to a handicapped student with special education needs if the recipient does not offer programs to meet those needs.

Postsecondary Education

The Section 504 regulation applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or

benefit from Federal financial assistance for the operation of, such programs or activities.

For purposes of postsecondary and vocational education services, a qualified handicapped person is a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity.

The regulation enumerates specific programs and activities which postsecondary and vocational education recipients must operate in a nondiscriminatory manner. This includes, but is not limited to: recruitment, admission, academic programs, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, and transportation.

Quotas for admission of handicapped persons are prohibited. Recipients may not base admissions decisions on any test or criterion that has a disproportionate adverse effect on handicapped persons unless it has been validated as a predictor of academic success in the education program or activity in question, and alternate tests or criteria with a less disproportionate adverse effect are not shown to be available by the Assistant Secretary for Civil Rights in the Department of Education. Recipients must also assure themselves that any admissions test, administered to an applicant who has a handicap that impairs manual, sensory or speaking skills, accurately reflects the applicant's aptitude, achievement level or other factors the test purports to measure, except where those skills are the factors the test is designed to measure.

Recipients must also assure themselves that admissions tests designed for persons with impaired sensory, manual or speaking skills are offered as often and in as timely a manner as other admissions tests. Finally, recipients must assure themselves that admissions tests are administered in facilities that are, on the whole, accessible to handicapped persons.

Preadmission inquiries as to whether an applicant is handicapped are prohibited, except when a recipient is taking remedial action to correct the effects of past discrimination or taking voluntary action to overcome the effects of conditions that resulted in limited participation by handicapped persons. In each instance, the recipient must inform the applicant of the primary purpose and voluntary nature of the inquiry and that any information provided will be kept confidential. However, a recipient may make postadmission inquiries on a confidential basis for the purpose of determining if a handicapping condition may require accommodation.

For federally assisted programs or activities operated by postsecondary education recipients, the specific obligations with regard to handicapped students include the following:

- Handicapped students must be afforded an equal opportunity to participate in and benefit from all postsecondary education programs and activities, including education programs and activities not operated wholly by the recipient.
- Handicapped students must be afforded the opportunity to participate in any course, course of study, or other part of the education program or activity offered by the recipient.
- All programs and activities must be offered in the most integrated setting appropriate.
- Academic requirements must be modified, on a case by case basis, to afford qualified handicapped students and applicants an equal educational opportunity. For example, modifications may include changes in the length of time permitted for completion of degree requirements. However, academic requirements that the recipient can demonstrate are essential will not be regarded as discriminatory.
- A recipient may not impose upon handicapped students rules that have the effect of limiting their participation in the recipient's education program or activity; for example, prohibiting tape recorders in classrooms or guide dogs in campus buildings.
- Students with impaired sensory, manual or speaking skills must be provided auxiliary aids, such as taped texts, interpreters, readers, and classroom equipment adapted for persons with manual impairments. Recipients can usually meet this obligation by assisting students to obtain auxiliary aids through existing resources, such as state vocational rehabilitation agencies and private charitable organizations. In those circumstances where the recipient institution must provide the educational auxiliary aid, the institution has flexibility in choosing the effective methods by which the aids will be supplied.
- Handicapped students must have an equal opportunity to benefit from comparable, convenient and accessible recipient housing, at the same cost as it is available to others. The availability of housing directly operated by a recipient must be in sufficient quantity and variety so that the choice of living conditions is, as a whole, comparable to that of nonhandicapped students. In addition, a recipient that assists any agency, organization, or person in making housing available shall assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.
- Handicapped students must have an equal opportunity to benefit from financial assistance. A recipient may not, on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate. A recipient may administer or assist in administering

scholarships, fellowships, or other forms of financial assistance, under wills, trusts, bequests, or similar legal instruments that require awards on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

- Handicapped students must have an equal opportunity to benefit from programs that provide assistance in making outside employment available to students. A recipient that employs any of its students may not discriminate against handicapped students in such employment.
- Handicapped students must be provided an equal opportunity to participate in intercollegiate, club, and intramural athletics. Separate or different physical education and athletic activities are permitted only when these activities are provided in the most integrated setting appropriate, and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.
- Handicapped students must be provided counseling and placement services in a nondiscriminatory manner. Specifically, qualified handicapped students must not be counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

Health, Welfare and Social Services

The Department of Education Section 504 regulation applies to all programs receiving financial assistance from the Department, including Department-funded health, welfare and social service programs.* Vocational rehabilitation programs and services are, therefore, subject to the regulation. With respect to health, welfare and social services, a qualified handicapped person is one who meets the essential eligibility requirements for receipt of service. By Federal law or executive order, vocational rehabilitation programs may be limited to certain classes of handicapped persons.

Providers of federally assisted health, welfare and social service programs may not, on the basis of handicap:

- Deny benefits or services to qualified handicapped persons.

*Health, welfare and social service programs receiving financial assistance from the U.S. Department of Health and Human Services (HHS) are subject to the Section 504 regulation promulgated by HHS.

- Deny a qualified handicapped person an opportunity to receive benefits or services equal to that offered nonhandicapped persons.
- Provide services or benefits to qualified handicapped persons that are not as effective as the benefits provided to others.
- Provide benefits or services in a manner that limits, or tends to limit, the participation of qualified handicapped persons.
- Provide unnecessarily separate benefits or services.

Agencies that provide general notice concerning benefits or services must ensure that qualified handicapped persons are given effective notice. This can be done in several ways. For example, an agency can provide notice of benefits or services with Braille messages, radio spots, and tactile devices on cards or envelopes to inform blind persons of the need to call the agency for further information.

Recipients that employ 15 or more employees must provide appropriate auxiliary aids to qualified handicapped persons when necessary to provide these persons with an equal opportunity to benefit from services. The Assistant Secretary may require a recipient with fewer than 15 employees to provide auxiliary aids where this would not significantly impair the recipient's ability to provide its benefits or services.

Agencies that operate or supervise federally assisted programs or activities for persons institutionalized because of handicap must ensure that handicapped children, who meet certain age requirements or for whom a state is required to provide a free and appropriate education under the Education of the Handicapped Act, are provided an appropriate education.

Employment Practices

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity which receives Federal financial assistance.

With respect to employment, a qualified handicapped person is a person who, with reasonable accommodation, can perform the essential functions of the job in question.

The regulation prohibits discrimination in all employment related decisions in federally assisted programs, including, but not limited to, recruitment, hiring, promotion, award of tenure, layoff and rehiring, compensation, job assignments, leave, fringe benefits, training, and employer sponsored activities. This prohibition applies to employment related decisions made by the recipient directly as well as decisions made by the recipient indirectly through contractual arrangements or other relationships with organizations such as

employment agencies, labor unions, organizations providing or administering fringe benefits, and organizations providing training and apprenticeship programs.

Employers must provide and pay for reasonable accommodation, as needed, to enable qualified handicapped persons to perform the essential functions of the job unless an employer can show that the accommodation would impose an undue hardship on the operation of its program. Reasonable accommodation may include making facilities used by employees accessible to and usable by handicapped persons, job restructuring, modified work schedules, acquisition or modification of existing equipment, and the provision of readers or interpreters. As examples, an employer may be required to provide adequate workspace and access for an employee who uses a wheelchair, or a dictaphone for an employee who has a manual impairment and whose job requires the development of written materials.

Employers may not use employment tests or other criteria that screen out or tend to screen out handicapped persons unless the test scores or criteria are shown to be job-related for the positions in question and unless alternative tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown to be available by the Assistant Secretary for Civil Rights in the Department of Education. Employers must select and administer tests so as to ensure that the results reflect the applicant's or employee's ability, job skills or other factors the tests purport to measure, rather than the person's impaired sensory, manual, or speaking skills, except where those skills are the factors the test is designed to measure.

Employers cannot require preemployment medical examinations. Employers cannot make preemployment inquiries as to whether an applicant is handicapped, or about the extent of a handicap, unless the employer is taking remedial action to correct the effects of past discrimination, or taking voluntary action to overcome the effects of conditions that resulted in limited participation by handicapped persons, or taking affirmative action under Section 503 of the Rehabilitation Act.* However, in each instance, the recipient must inform the applicant of the primary purpose and voluntary nature of the inquiry and that any information provided will be kept confidential. Employers may ask about the applicant's ability to perform job-related functions, and they may require a physical examination after they have made a conditional offer of employment, provided all entering employees are subjected to a physical examination and provided the results are not used in a discriminatory manner.

*Section 503 requires Federal contractors to take affirmative action to hire, place, and advance qualified handicapped persons.

How to File a Complaint of Discrimination

Anyone who believes there has been an act of discrimination on the basis of handicap, against any person or group, in a program receiving financial assistance from the Department of Education may file a complaint with the Office for Civil Rights. A complaint should be sent to the regional office that serves the State in which the discrimination allegedly occurred (see list with addresses). A complaint must be in writing and must be signed. A complaint must also be filed within 180 days of the date of the alleged discrimination, unless the time for filing is extended, for good cause, by the Regional Civil Rights Director.

Letters of complaint should explain who was discriminated against; in what way; by whom or by what institution; when the discrimination took place; who was harmed; who can be contacted for further information; the name, address, and telephone number of the complainant and recipient; and as much background information as possible about the alleged discriminatory act. These are suggestions, not requirements. However, the Office for Civil Rights can respond more efficiently if it is well informed. OCR regional offices may be contacted for assistance in the preparation of complaints.

Department of Education
Office for Civil Rights
Regional Civil Rights Offices

Region I

Connecticut, Maine, Massachusetts, New Hampshire,
Rhode Island, Vermont

Regional Civil Rights Director
Office for Civil Rights, Region I
U.S. Department of Education
John W. McCormack Post Office and
Court House Square, Room 222
Boston, Massachusetts 02109
(617) 223-1154 TTY (617) 223-1111

Region II

New Jersey, New York, Puerto Rico, Virgin Islands

Regional Civil Rights Director
Office for Civil Rights, Region II
U.S. Department of Education
26 Federal Plaza, 33rd Floor
New York, New York 10278
(212) 264-4633 TTY (212) 264-9464

Region III

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia,
West Virginia

Regional Civil Rights Director
Office for Civil Rights, Region III
U.S. Department of Education
Gateway Building, 3535 Market Street
Post Office Box 13716
Philadelphia, Pennsylvania 19104
(215) 596-6772 TTY (215) 596-6794

Region IV

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina,
South Carolina, Tennessee

Regional Civil Rights Director
Office for Civil Rights, Region IV
U.S. Department of Education
101 Marietta St. N.W., 27th Floor
Atlanta, Georgia 30323
(404) 331-2954 TTY (404) 331-2010

Region V

Illinois, Indiana, Minnesota, Michigan, Ohio, Wisconsin

Regional Civil Rights Director
Office for Civil Rights, Region V
U.S. Department of Education
300 South Wacker Drive - 8th Floor
Chicago, Illinois 60606
(312) 353-2520 TTY (312) 353-2540

Region VI

Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Regional Civil Rights Director
Office for Civil Rights, Region VI
U.S. Department of Education
1200 Main Tower Building, Suite 2260
Dallas, Texas 75202
(214) 767-3959 TTY (214) 767-3516

Region VII

Iowa, Kansas, Missouri, Nebraska

Regional Civil Rights Director
Office for Civil Rights, Region VII
U.S. Department of Education
10220 N. Executive Hills Blvd. - 8th Floor
Kansas City, Missouri 64153
(816) 891-8026 TTY (816) 891-8183

Region VIII

Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Regional Civil Rights Director
Office for Civil Rights, Region VIII
U.S. Department of Education
1961 Stout Street, Room 1185
Denver, Colorado 80294
(303) 844-5695 TTY (303) 844-3417

Region IX

Arizona, California, Hawaii, Nevada, Guam, Trust Territory of the Pacific Islands, American Samoa

Regional Civil Rights Director
Office for Civil Rights, Region IX
U.S. Department of Education
221 Main St. - 10th Floor
San Francisco, California 94105
(415) 227-8020 TTY (415) 227-8124

Region X

Alaska, Idaho, Oregon, Washington

Regional Civil Rights Director
Office for Civil Rights, Region X
U.S. Department of Education
2901 3rd Avenue, Mail Stop 106
Seattle, Washington 98101
(206) 442-1635 TTY (206) 442-4542

Rehabilitation Act of 1973

Section 504. No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of . . . handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.